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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

JESSE CANTU, individually, and on behalf of all others similarly situated,

Plaintiff,

V.

GEICO, d/b/a/ www.geico.com; and
DOES 1 through 10,
inclusive.

Defendants.

|| Case No.

CLASS ACTION

COMPLAINT FOR VIOLATION OF THE VIDEO PROTECTION PRIVACY ACT

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Whenever someone watches a video on www.geico.com (the “Website”), Defendants secretly report all the details to Google: the visitor’s personally identifiable information (“PII”), the titles watched, and more. Why? Data harvesting and targeted advertising.

2. As shown below, Defendants' actions violate the Video Privacy Protection Act of 1988, 18 U.S.C. §§ 2710 *et seq.* ("VPPA"). As such, Defendants are liable for statutory damages, an injunction, and related relief.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to 28
U.S.C. § 1331 because it arises under the VPPA, a federal law.

4. Venue is proper pursuant to 28 U.S.C. § 1391 because a substantial part of the acts and events giving rise to the claims occurred in this District.

PARTIES

5. Plaintiff is an individual and a consumer advocate.

6. The above-named Defendant, along with its affiliates and agents, are collectively referred to as “Defendants.”

10 7. Defendants own, operate, and or control the Website. The true names and
11 capacities of the Defendants sued herein as DOE DEFENDANTS are currently
12 unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Plaintiff
13 will amend the Complaint to reflect the true names of the DOE Defendants when such
14 identities become known.

15 8. Plaintiff is informed and believes that at all relevant times, every
16 Defendant was acting as an agent and/or employee of each of the other Defendants and
17 was acting within the course and scope of said agency and/or employment with the full
18 knowledge and consent of each of the other Defendants, and that each of the acts and/or
19 omissions complained of herein was ratified by each of the other Defendants.

FACTUAL ALLEGATIONS

A. GOOGLE ANALYTICS

22 9. Google Analytics is a free web analytics service offered by Google that
23 helps website owners track and report web traffic. It provides insights into website
24 visitors, their behavior and demographics, the sources of website traffic, and more. The
25 information gathered by Google Analytics helps website owners better understand their
26 website visitors and optimize their online content and advertising efforts.

27 10. Google Analytics is part of the Google Marketing Platform and is available
28 for free to anyone with a Google account. There are two commonly used versions of

1 Google Analytics: Google Analytics 3 (Universal Analytics) and Google Analytics 4
 2 (GA4). Universal Analytics is the legacy version of Google Analytics and is slowly
 3 being phased out.¹ GA4 is the latest version of Google Analytics that was launched in
 4 2020.² The tools are materially similar in how they collect and transmit website
 5 analytics data to Google.³

6 11. Google Analytics acquires user data from each website visitor using one or
 7 more tracking tags installed on the website. A tracking tag is a small piece of JavaScript
 8 code that the website owner inserts into the existing code of each page. The Google
 9 Analytics tracking tags run in the web browser of each visitor, collecting data and
 10 sending it to Google's data collection points.

11 12. Website owners control what data the Google Analytics tracking tag will
 12 collect, including the website's metadata, along with what pages a visitor views.

13 13. Website owners control how the Google Analytics tracking tag identifies
 14 visitors. The Google Analytics tracking tag is configured to collect "HTTP Headers"
 15 and "Event Parameter" data. HTTP headers include data such as IP Address, User
 16 Agent String, and Language. HTTP headers are sent to Google from the web browser
 17 with every Google Analytics event that is tracked. Event Parameters vary based on the
 18 type of event and may include data such as web form interactions, video views, file
 19 downloads, page scrolls, web searches, etc.⁴

20 14. Google Analytics can generate customizable reports to track and visualize
 21 data such as the number of users, bounce rates, average session durations, sessions by
 22 channel, page views, conversions (such as purchases and adding products to carts), and
 23 more. Google Analytics is "designed to work together" with other Google Marketing

24 ¹ ABOUT UNIVERSAL ANALYTICS, <https://support.google.com/analytics/answer/2790010?hl=en> (last visited
 February 2023)

25 ² [GA4] INTRODUCING THE NEXT GENERATION OF ANALYTICS, GOOGLE ANALYTICS 4,
<https://support.google.com/analytics/answer/10089681?hl=en> (last visited February 2023)

26 ³ UNIVERSAL ANALYTICS VERSUS GOOGLE ANALYTICS 4 DATA,
https://support.google.com/analytics/answer/9964640?hl=en&ref_topic=12153646,12153943,2986333,&visit_id=638115536489543614-1150820823&rd=1#zippy=%2Cin-this-article (last visited February 2023)

27 ⁴ [GA4] ENHANCED EVENT MEASUREMENT, <https://support.google.com/analytics/answer/9216061> (last visited
 February 2023)

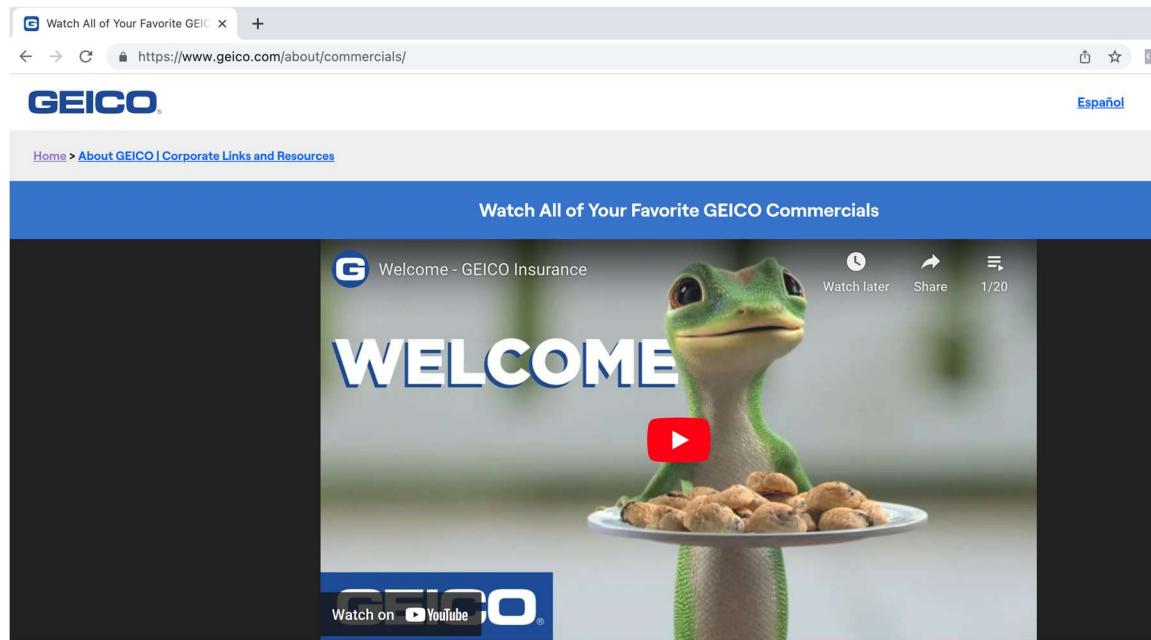
1 Platform products to help measure, understand and enhance a website's digital
 2 marketing.⁵ For example, website owners can easily export data from Google Analytics
 3 to Google Marketing products to generate audience segments to facilitate targeted
 4 advertising.

5 **B. DEFENDANTS ARE A “VIDEO TAPE SERVICE PROVIDER” UNDER
 6 THE VPPA.**

7 15. Defendants are “engaged in the business of delivery of video cassette tapes
 8 or similar audio-visual materials.” 18 U.S.C. § 2710(a)(4). Specifically, Defendants’
 9 business model involves using pre-recorded videos and audio-visual materials to
 10 promote and monetize their products.

11 16. Consistent with its business model, the Website hosts and delivers content
 12 including videos:

13 **Figure 1**



25 17. As such, Defendant is a Video Tape Service Provider under the VPPA.

26 **C. DEFENDANT KNOWINGLY DISCLOSED PLAINTIFF'S PII TO**

27 ⁵ GOOGLE MARKETING PLATFORM, ABOUT GOOGLE ANALYTICS,
 28 <https://marketingplatform.google.com/about/analytics/> (last visited February 2023)

1 **GOOGLE.**

2 18. The VPPA defines PII to “include[]” “information which identifies a
 3 person as having requested or obtained specific video materials or services from a video
 4 tape service provider.” 18 U.S.C. § 2710(a)(3). This means “information that would
 5 ‘readily permit an ordinary person to identify a specific individual’s video-watching
 6 behavior.’ ” *Eichenberger v. ESPN, Inc.*, 876 F.3d 979, 985 (9th Cir. 2017).

7 19. Plaintiff has a Google account and watched a video on the website.
 8 Defendants disclosed information that allows Google (and any ordinary person) to
 9 readily identify Plaintiff’s video-watching behavior, as shown by the below exemplar of
 10 the information Defendant transmits to Google when someone watches a video on the
 11 website:

12 **Figure 2**

Google Tag Assistant Legacy	
Tag Assistant is changing. Learn more	
1	Pageview
Metadata	Custom Metrics
v	1
_v	j99
a	670118649
t	pageview
_s	1
dl	https://www.geico.com/about/commercials/
dr	null
ul	en-us
de	UTF-8
dt	Watch All of Your Favorite GEICO Commercials GEICO

Figure 3

Google Tag Assistant Legacy

Tag Assistant is changing. [Learn more](#)

1 Event video - play

Event	Custom Metrics	URLs
Category	video	
Action	play	
Label	Welcome - GEICO Insurance	
Non-Interaction	No	
Title	Watch All of Your Favorite GEICO Commercials GEICO	

Figure 4

Name	x	Headers	Payload	Preview	Response	Initiator	Timing	Cookies
analytics.js	<input type="checkbox"/>							
collect?v=1&_v=j99&a=656972092&t=pageview&_s=1&...	<input type="checkbox"/>							
collect?v=2&tid=G-91H6GD762W>m=45je32r0&_p=6...	<input type="checkbox"/>							
analytics.js	<input type="checkbox"/>							
collect?v=1&_v=j99&a=557762971&t=pageview&_s=1&...	<input type="checkbox"/>							
collect?v=2&tid=G-91H6GD762W>m=45je32r0&_p=5...	<input type="checkbox"/>							
collect?v=2&tid=G-91H6GD762W>m=45je32r0&_p=5...	<input type="checkbox"/>							
collect?v=2&tid=G-91H6GD762W>m=45je32r0&_p=5...	<input type="checkbox"/>							

1
2 **Figure 5**

3 Name	4 Value	5 Domain
6 __Secure-1PSIDCC	7 AFvIBn...	8 .google.com
9 1P_JAR	10 2023-3-2-3	11 .google.com
12 __Secure-3PSID	13 TwgBjXH...	14 .google.com
15 __Secure-1PSID	16 TwgBjXH...	17 .google.com
18 SIDCC	19 AFvIBn8...	20 .google.com
21 SID	22 TwgBjXH...	23 .google.com
24 __Secure-3PAPISID	25 ZQhyFA...	26 .google.com
27 __Secure-1PAPISID	28 ZQhyFA...	29 .google.com
30 NID	31 511=MC...	32 .google.com
33 APISID	34 3fhTCwf...	35 .google.com
36 SSID	37 AUrwRy...	38 .google.com
39 SAPISID	40 ZQhyFA...	41 .google.com
42 AEC	43 ARSKqs...	44 .google.com
45 __Secure-3PSIDCC	46 AFvIBn8f...	47 .google.com
48 HSID	49 A6aUZxl...	50 .google.com

14
15 20. Defendant's actions readily permit an ordinary person to identify
16 Plaintiff's video-watching behavior.

17 **D. PLAINTIFF IS A “CONSUMER” UNDER THE VPPA.**

18 21. The VPPA defines the term “consumer” to mean “any renter, purchaser, or
19 subscriber of goods or services from a video tape service provider[.]” 18 U.S.C. §
20 2710(a)(1).

21 22. Plaintiff has downloaded Defendant's app onto plaintiff's smart phone. As
22 such, Plaintiff is a “consumer” under the VPPA. *See Yershov v. Gannett Satellite Info.*
23 *Network, Inc.*, 820 F.3d 482 (1st Cir. 2016).

24 23. Plaintiff is a consumer privacy advocate with dual motivations for
25 watching a video on Defendants' Website. First, Plaintiff was genuinely interested in
26 learning more about the goods and services offered by Defendants. Second, Plaintiff is
27 a “tester” who works to ensure that companies abide by the obligations imposed by
28 federal law. As someone who advances important public interests at the risk of vile

1 personal attacks, Plaintiff should be “praised rather than vilified.” *Murray v. GMAC*
2 *Mortgage Corp.*, 434 F.3d 948, 954 (7th Cir. 2006).

3 24. During the past year, Plaintiff visited the Website and watched one or more
4 videos.

5 25. When Plaintiff watched videos on the Website, Defendants disclosed
6 information that allowed Google (and any ordinary person) to readily identify Plaintiff’s
7 video-watching behavior. Defendants did so knowingly and for the purpose of
8 retargeting Plaintiff in connection with Google advertising campaigns. Defendants did
9 not obtain the informed, written consent of Plaintiff to disclose PII concerning Plaintiff
10 to third parties.

11 26. Visitors would be shocked and appalled to know that Defendants secretly
12 disclose to Google all of the key data regarding a visitor’s viewing habits.

13 27. Defendants’ conduct is illegal, offensive, and contrary to visitor
14 expectations: indeed, a recent study conducted by the Electronic Privacy Information
15 Center, a respected thought leader regarding digital privacy, found that: (1) nearly 9 in
16 10 adults are “very concerned” about data privacy, and (2) 75% of adults are unaware of
17 the extent to which companies gather, store, and exploit their personal data.

18 **CLASS ALLEGATIONS**

19 28. Plaintiff brings this action individually and on behalf of all others similarly
20 situated (the “Class”) defined as follows:

21 **All persons in the United States who watched or played**
22 **video content on www.geico.com and whose PII was**
23 **disclosed by Defendants to Google within the two years**
24 **prior to the filing of this action.**

25 29. Plaintiff represents, and is a member of, The Class, consisting of all in the
26 United States who watched or played video content on www.geico.com and whose PII
27 was disclosed by Defendants to Google within the two years prior to the filing of this
28 action.

1 30. Defendants, their employees and agents and the Court and its staff are
2 excluded from The Class. Plaintiff does not know the number of members in The
3 Class, but believes the Class members number in the thousands, if not more. Thus, this
4 matter should be certified as a Class Action to assist in the expeditious litigation of the
5 matter.

6 31. The Class is so numerous that the individual joinder of all of its members
7 is impractical. While the exact number and identities of The Class members are
8 unknown to Plaintiff at this time and can only be ascertained through appropriate
9 discovery, Plaintiff is informed and believes and thereon alleges that The Class includes
10 thousands of members. Plaintiff alleges that The Class members may be ascertained by
11 the records maintained by Defendants.

12 32. Plaintiff and members of The Class were harmed by the acts of Defendants
13 in at least the following ways: Defendants, either directly or through its agents, illegally
14 disclosed Plaintiff and Class Members' PII to Google, invading the privacy of said
15 Plaintiff and Class members.

16 33. Common questions of fact and law exist as to all members of The Class
17 which predominate over any questions affecting only individual members of The Class.
18 These common legal and factual questions, which do not vary between Class members,
19 and which may be determined without reference to the individual circumstances of any
20 Class members, include, but are not limited to, the following:

- 21 a) whether Defendants collected Plaintiff's and the Class's PII;
- 22 b) whether Defendants unlawfully disclosed and continues to disclose
23 their users' PII in violation of the VPPA;
- 24 c) whether Defendants' disclosures were committed knowingly; and
- 25 d) whether Defendants disclosed Plaintiff's and the Class's PII without
26 consent.

27 34. As a person whose PII was communicated by Defendants to Google and in
28 violation of the VPPA, Plaintiff is asserting claims that are typical of The Class.

35. Plaintiff will fairly and adequately protect the interests of the members of The Class. Plaintiff has retained attorneys experienced in the prosecution of class actions.

4 36. A class action is superior to other available methods of fair and efficient
5 adjudication of this controversy, since individual litigation of the claims of all Class
6 members is impracticable. Even if every Class member could afford individual
7 litigation, the court system could not. It would be unduly burdensome to the courts in
8 which individual litigation of numerous issues would proceed. Individualized litigation
9 would also present the potential for varying, inconsistent, or contradictory judgments
10 and would magnify the delay and expense to all parties and to the court system resulting
11 from multiple trials of the same complex factual issues. By contrast, the conduct of this
12 action as a class action presents fewer management difficulties, conserves the resources
13 of the parties and of the court system, and protects the rights of each Class member.

14 37. The prosecution of separate actions by individual Class members would
15 create a risk of adjudications with respect to them that would, as a practical matter, be
16 dispositive of the interests of the other Class members not parties to such adjudications
17 or that would substantially impair or impede the ability of such non-party Class
18 members to protect their interests.

19 38. Defendants have acted or refused to act in respects generally applicable to
20 The Class, thereby making appropriate final and injunctive relief with regard to the
21 members of the Class as a whole.

CAUSE OF ACTION

VIOLATION OF THE VIDEO PRIVACY PROTECTION ACT

18 U.S.C. § 2710 *et seq.*

39. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs above as if fully set forth herein.

40. Defendants are “video tape service provider[s]” that create, host, and deliver videos on the Website as set forth above. Defendants use videos to collect viewers’ PII so they can later retarget them for advertisements.

41. Plaintiff and members of the Class are “consumers” as set forth above. 18 U.S.C. § 2710(a)(1).

42. As set forth above, Defendants knowingly disclosed Plaintiff's and Class Members' PII to Google that allows any ordinary person to readily identify Plaintiff's and Class Members' video-watching behavior.

43. Defendants knowingly disclosed Plaintiff's and Class Members' PII because they used that data to build audiences on Google and retarget Plaintiff and Class Members for Google advertising campaigns.

44. Defendants did not obtain the informed, written consent of Plaintiff or Class Members to disclose PII concerning Plaintiff or Class Members to third parties.

45. Defendants' disclosures were not made in the "ordinary course of business" as the term is defined by the VPPA because they were not necessary for "debt collection activities, order fulfillment, request processing, [or] the transfer of ownership." 18 U.S.C. § 2710(a)(2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment against Defendants, individually and on behalf of all others similarly situated, as follows:

- a. For an order certifying the Class under Rule 23 of the Federal Rules of Civil Procedure, naming Plaintiff as representative of the Class and Plaintiff's counsel as class counsel;
- b. For an order declaration that Defendant's conduct violates the VPPA;
- c. For an order finding in favor of Plaintiff and the Class on all counts asserted herein;
- d. An award of statutory damages under the VPPA;
- e. An award of punitive damages;

- 1 f. Prejudgment interest in all amounts awarded;
- 2 g. For injunctive relief to stop the illegal conduct; and
- 3 h. For an order awarding Plaintiff and the Class their reasonable attorneys'
- 4 fees, expenses, and costs of suit.
- 5 i. For all such other relief, at law or in equity, as may be proper.

6 46. Pursuant to the Seventh Amendment to the Constitution of the United
7 States of America, Plaintiff is entitled to, and demands, a trial by jury.

8
9 Respectfully Submitted this 25th Day of April, 2023.

10 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

11 By: /s/ Todd M. Friedman
12 Todd M. Friedman
13 Law Offices of Todd M. Friedman
14 Attorney for Plaintiff and the putative Class
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